

Memorandum

San Francisco Police Department



To: Gregory P. Suhr
Chief of Police
San Francisco Police Department

APPROVED

YES

NO

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From: Lieutenant Robert Yick #1264
Commanding Officer
Internal Affairs Division-Admin

Date: June 11, 2015

Subject: Officer-Involved Shooting #14-004

MEMBERS:

Lieutenant Jason Sawyer #1127 (Note: Hereafter, Lt. Sawyer is referred to as
"Sergeant," his rank at the time of this
incident.)

Officer Richard Schiff #1968

Officer Roger Morse #1923

Officer Nathan Chew #2088

TYPE OF INVESTIGATION:

Administrative- Officer-Involved Shooting

CASE NUMBER:

OIS 14-004

Case #140-240-512

**DATE, TIME AND PLACE
OF OCCURRENCE:**

March 21, 2014 at 1911 hours

Bernal Heights Park, San Francisco, CA

INVESTIGATOR:

Sergeant Jayme Campbell #759

INCIDENT BRIEF:

On Friday, March 21, 2014, at approximately 1911 dispatch broadcast the call of an "A Priority 221"- person with a gun- in Bernal Heights Park. 3H104, Sergeant Sawyer #1127, and Officer Richard Schiff #1968 advised dispatch they were responding to the call.

The description of the suspect was of a Latin male, 6'1", 200 lbs, wearing a bright red jacket, black pants, and a black handgun on his hip. Further information had come out that he was pacing back and forth by a chain link fence, and resting his hand on the gun.

Sergeant Sawyer and Officer Schiff located the suspect on the north access road inside Bernal Heights Park. Officer Schiff pulled up to within twenty-five to thirty yards of the suspect at which time they exited their patrol vehicle, weapons drawn, and took cover within the A-frame of their vehicle. Both the sergeant and officer gave the suspect commands to show his hands. The suspect took a "Weaver" stance; hands up in the gun ready position, right foot back. As the suspect made this movement, the holster and gun became visible.

Sergeant Sawyer and Officer Schiff continued to give commands to the suspect to show them his hands at which time the suspect replied, "Show me your hands!" The suspect then drew his weapon, equipped with a laser, and pointed it at Sergeant Sawyer and Officer Schiff. Sergeant Sawyer and Officer Schiff both discharged their Department-issued firearms several times at the suspect. The

suspect then seemingly took a tactical, prone position, with his arms extended out in front of him and his head up.

By this time, 3H15D, Officer Roger Morse #1923 and Officer Nathan Chew #2088, had arrived on the scene with Sergeant Sawyer. Both officers observed the suspect in the prone position, and believed he was engaged in a gun battle with Sergeant Sawyer and Officer Schiff. Believing their lives and the lives of Sergeant Sawyer and Officer Schiff were in danger, both Officers Morse and Chew discharged their Department-issued firearms several times.

Once Sergeant Sawyer believed the threat was over, he yelled, "Cease fire!" The officers approached the suspect, and Officer Morse, who saw that the gun was actually a taser gun, kicked it out of the suspect's hand to render the scene safe. The suspect was then handcuffed and the officers rendered aid until the SFFD Medics arrived.

FOCUS OF INVESTIGATION:

Was the firearm discharge involving Sergeant Jason Sawyer #1127, Officer Richard Schiff #1968, Officer Nathan Chew #2088, and Officer Roger Morse #1923 within Department policy and procedure?

IDENTIFIED/INVOLVED PARTIES:

Member(s): Lieutenant Jason Sawyer #1127 (then Sergeant)

Ingleside Station Patrol

Date of Entry: [REDACTED]

Officer Richard Schiff #1968

Ingleside Station Patrol

Date of Entry: [REDACTED]

Officer Nathan Chew #2088

Ingleside Station Patrol

Date of Entry: [REDACTED]

Officer Roger Morse #1923

Ingleside Station Patrol

Date of Entry: [REDACTED]

Witness(es):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Suspect:

Name: Alejandro Nieto

Sex/Race: Male/ Latin

DOB: [REDACTED]

Ht. / Wt: 6'0" / 185lbs

Address of Record: [REDACTED]

SF#: N/A

CII#: [REDACTED]

- [REDACTED]

INVESTIGATIVE CHRONOLOGY:

Refer to Attachment A

INVESTIGATIVE FINDINGS:

The following investigative findings rely substantially upon interviews of involved officers: Sergeant Jason Sawyer #1127, Officer Richard Schiff #1968, Officer Roger Morse #1923, and Officer Nathan Chew #2088; and witnesses, that were conducted by Homicide Detail investigators (handling the criminal investigation memorialized in incident report 140-240-512) and by Internal Affairs Division investigators (handling the administrative investigation of case number OIS 14-004). These findings are based on additional sources of information related to this incident, including the findings of Inspector John Cagney's #341 criminal investigation, the Office of the District Attorney's review, the incident report, written statements by responding officers, physical evidence, CSI reports and analysis, and DEM CAD and audio records.

Incident Overview

On Friday, March 21, 2014, at approximately 1911hrs, dispatch broadcast the call of an "A Priority 221"- person with a gun- in Bernal Heights Park. 3H104,

Sergeant Sawyer #1127, and Officer Richard Schiff #1968 advised dispatch they were responding to the call.

Sergeant Sawyer, a Field Training Sergeant, was conducting a ride-along with Officer Schiff who was in the Third Phase of his Field Training. Officer Schiff was the driver of their marked SFPD patrol vehicle while Sergeant Sawyer was the front passenger that evening and they were wearing their Class B uniforms. It was a clear yet windy day, and the sun was out providing ample light so the officer was not utilizing any additional lighting from the patrol vehicle or otherwise.

Dispatch broadcasted the description of the suspect, later identified as Alejandro Nieto. The description, provided by a 9-1-1 caller who was in the park with [REDACTED], was of a Latin male, 6'1", 200 lbs, wearing a bright red jacket, black pants, and a black handgun on his hip. Further information had come out from the same caller that Nieto was eating chips or "sunflowers," pacing back and forth by a chain link fence, and resting his hand on the gun.

After searching the outskirts of the park with negative results, Officer Schiff, who was familiar with the area, maneuvered the patrol vehicle around a gate that led to a north access road into the park. As he drove up the hill and around a curve, he and Sergeant Sawyer observed Nieto, dressed as described by the 9-1-1 caller, walking down the hill towards their patrol vehicle. Officer Schiff pulled up to within twenty-five to thirty yards of Nieto. Officer Schiff and Sergeant Sawyer started to exit their vehicle. Per Officer Schiff, as he started to open his vehicle door, Nieto had raised his arms a little and he could see a black holster on Nieto's right hip. According to Officer Schiff, "It was black- it looked like a big plastic holster with a 221 weapon, a firearm." It was at that point when Officer

Schiff believed Nieto had a firearm. Officer Schiff subsequently drew his Department-issued firearm and pointed it at Nieto while giving him commands to show his hands.

Sergeant Sawyer stated that as they were coming up the hill, he could see Nieto doing exactly what the caller had stated; walking and eating a bag of chips. He said Nieto "fit the description exactly as the caller put out," and he could see a bulge on the right side of Nieto but his sweatshirt was covering it. Sergeant Sawyer stated that Nieto appeared to be oriented, not out of breath, or erratic, and he was walking with a "normal gait." He said when they got to a distance that he felt was appropriate to contact Nieto and still utilize the patrol vehicle as cover, he told Officer Schiff to stop. He exited the vehicle with his Department-issued firearm drawn, and used the right pillar of the door frame as cover while Officer Schiff used the left pillar. Sergeant Sawyer said he gave Nieto several commands to show his hands.

As Sergeant Sawyer and Officer Schiff yelled out the commands to show his hands, Nieto took a "Weaver" stance; hands in front of him, above waist level and "in the gun ready position," with his right foot back. As Nieto made this movement, in one smooth motion, he lifted the right side of his sweatshirt, pulled the weapon from the holster, pointed it at the officers, and said to them, "Let me see your hands!" (per Sergeant Sawyer) or "Show me your hands!" (per Officer Schiff).

Both officers saw a red laser sight emitting from Nieto's weapon directed at them. Fearing they were about to be shot and killed, both Sergeant Sawyer and Officer Schiff discharged their Department-issued firearms several times at Nieto. Nieto, kept his arms extended in front of him with the weapon still

pointed at the officers. He first dropped to his knees, and then went onto his stomach, seemingly taking a tactical, prone position. In this position, Nieto kept his arms extended out in front of him, weapon in his hands, and pointing at Sergeant Sawyer and Officer Schiff. Nieto's head was still up causing the officers to believe he was still firing at them.

Officer Schiff stated in his Homicide interview,

I told him [Nieto] to show me his hands. He didn't comply. He yelled back at me at which point when I saw his shirt lift and I could see it I told him I see- I tried to tell him I see the gun, he's already gone for it. He drew it and once he drew it at that point I knew that if I had not fired I could possibly be dead within the next few seconds.

Sergeant Sawyer explained in his Homicide interview,

We're in full uniform, it's easy to identify us, marked police vehicle right with us. It's completely obvious who we are. At that point because he had spoken English to us I know it wasn't a language barrier, it did not seem he had some type of hearing issue, any type of mental illness that would cause me to think it was anything other than a man coming at us with a gun, with a gun pointed- it was not in a low ready position, it wasn't pointed at the sky. It was pointed directly at us. I thought he was going to shoot, fire and shoot me or my partner. There was no question in my mind that this guy had bad intentions and I fired to protect myself and to protect my partner.

While Sergeant Sawyer and Officer Schiff were engaged in gun fire with Nieto, 3H15D, Officer Roger Morse #1923 and Officer Nathan Chew #2088, had arrived on the scene in their marked, SFPD Patrol vehicle. Officer Morse was the driver

of the vehicle with Officer Chew as the front passenger, and they were both wearing their Class B uniforms.

Officer Morse said as they were driving to the scene, he kept hearing the updates of the suspect's location. Being familiar with Bernal Heights Park, he was also aware of the gate leading to the north access road into the park. Just before maneuvering the vehicle through the gate, he heard, who he believed to be, Sergeant Sawyer state over the radio that they had Nieto in sight. As Officer Morse began to make his way to Sergeant Sawyer and Officer Schiff's location through the gate, he could hear shots being fired.

When Officers Morse and Chew first observed Sergeant Sawyer and Officer Schiff's patrol vehicle, they were coming up from the rear of it. They could see the passenger officer ducked down behind the passenger door. Officer Morse stopped his patrol vehicle behind and to the right of Sergeant Sawyer's vehicle. Believing Nieto was engaged in a gun battle with Sergeant Sawyer and Officer Schiff, Officer Chew and Officer Morse exited their patrol vehicle. Officer Morse took up a position next to Officer Schiff while Officer Chew stayed on the passenger side of his own vehicle. Believing they too were about to be shot and killed along with Sergeant Sawyer and Officer Schiff, they discharged their Department-issued firearms several times.

In Officer Morse's Homicide interview he explained,

They're a little bit in front of me when I stopped the car. And then in front of them, I couldn't tell you the distance but, I could see the suspect who matches the description in the CAD prone out with his arms in front of him, and he's holding a gun, and I just hear popping sounds, and I see flashes and his hands are going like this

[indicates recoil from firing a weapon] and I look at the passenger who's still ducked down. I can't see who the driver is. I throw [the vehicle] in park, run around, still popping noises, [Nieto's] hands are still going like this [indicates outstretched in front of him] and so I don't know exactly what point I drew my firearm but eventually I drew it, drew down on the subject, start firing at him.

Officer Chew explained that just before they got through the north access gate, he could see Nieto, with a red jacket on, standing in the middle of the road. As they started up the access road, he lost sight of Nieto. They passed several officers who were running up the hill on foot. Officer Chew said he then heard five or six shots fired but did not know who was doing the shooting. He then heard Sergeant Sawyer come up on the air and broadcast that they had an officer involved shooting.

Officer Chew said Officer Morse pulled the patrol vehicle up behind Sergeant Sawyer's vehicle and he could see Sergeant Sawyer on the passenger side, gun drawn, pointing at Nieto. Officer Chew stated:

The suspect [Nieto] is now in a prone position pointing what looked like a firearm, a dark firearm with a laser pointer on it. When I exited the vehicle I could see that laser part kind of glint across my eyes so I shifted to the right believing that he was trying to fire at one of us. I fired my gun in an attempt to stop the threat.

Once Sergeant Sawyer believed the threat was over he yelled, "Cease fire!" None of the officers continued firing after hearing that order, despite Officer Schiff and Officer Morse believing a threat was still present. Officer Chew stated that he stopped firing after he saw Nieto's head drop and the weapon get pulled in towards his body.

Per Sergeant Sawyer's direction, the officers approached Nieto, with weapons still drawn, to assess the scene. As they approached, they gave Nieto commands to not move. Nieto still had the weapon in both of his hands. When Officer Morse got close enough, he kicked the weapon out of Nieto's hands to minimize any threat. It was not until the officers had made this approach that any of them recognized the weapon to be a Taser.

Officer Chew handcuffed Nieto while Officer Schiff checked for any vital signs. He did not feel a pulse present. Sergeant Sawyer requested an ambulance "Code 3" (Emergency). Officers attempted to render aid until the SFFD Medics arrived.

SFFD Medic 89 and SFFD Engine 11 arrived on scene. Shortly thereafter, SFFD Rescue Captain 3, Pung, arrived and announced Nieto deceased at 1928 hours.

Computer Assisted Dispatch (DEM) Records and Recordings

Certified copies of all Computer Aided Dispatch (CAD) records and the certified audio recordings were obtained from the Department of Emergency Management (DEM) and included with this report. The following noteworthy broadcasts and CAD entries provide a sequence of events and approximate timeframe for the incident.

➤ Timeline of Significant Events

(Based on official DEM audio and CAD records)

• **9-1-1 Recorded Call**

19:09:33

CHP transfers 9-1-1 call to SFPD Dispatch

19:10:00-:20 SF Dispatcher gains information from 9-1-1 caller

19:10:40 9-1-1 caller gives dispatch susp. Descript.

• Radio Traffic/ CAD: "A priority 221"

19:11:47 Dispatch broadcasts the call.

19:12:16 (3H104) "H104 responding."

**** 8 additional units showed responding as back-up in CAD**

19:12:40 (Dispatch) Further info re: suspect.

19:12:46 (Dispatch) Male is pacing back & forth by a chain link fence

19:14:16 (Dispatch) Subj is still 97 (on-scene)... per RP he is eating chips or sunflowers but resting his hand on the gun.

19:15:53- :18:05 *communication betw. 3H104 and disp. re: the unit's location and suspect location in park.

19:18:14 (3H104) Indicates there is a guy with a red shirt walking towards them.

19:18:18 (3H104) "I got a guy right here"

19:18:40 (3H104) "Code 33! Code 33! We got..."

19:18:42 (3H104) "Shots fired! Shots fired!"

19:19:00 (3H104) "Officer involved shooting. 408 Code 3"

19:19:40 (3H104) "Making contact now"

***Approximately 28 seconds elapsed between the time 3H104 indicates having sight of Nieto and the time they broadcasted shots were fired.**

Crime Scene Investigations/Laboratory Examination

Crime Scene Investigations responded to the scene located on the north access road in Bernal Heights Park. Evidence was seized and photos and crime scene video taken. Members of the Traffic Collision Investigation Unit also responded to map and diagram the scene. A written report was submitted and attached to this investigation.

CSI logged several evidentiary items from the incident including, but not limited to, the following:

- Forty-eight (48) .40 caliber casing located at scene.
- Three (3) SIG SAUER/ P226/ .40 caliber magazines.
- One "Taser International" Taser- including two Taser pins connected to wire.
- Handcuffs from Nieto's left, rear, pants pocket.
- (2) Pepper spray canisters (Not SFPD issued).
- Four (4) Department-issued firearms of involved officers-(Sig Sauer P226)
- "Taser International" Taser holster on Nieto's belt from the Medical Examiner.
- Bullets and fragments recovered by the Medial Examiner.

The following information was gathered from the Criminalistics Laboratory Report:

Standard firearms examinations were performed on each of the four collected Sig Sauer P226's (serial #s [REDACTED]) in accordance with the standard operating procedures of the Firearm and Toolmark Unit. Each of the four pistols were examined separately and found to be functional using a

magazine submitted with it. The trigger pulls were determined to be within the manufacturer's specifications for each firearm.

Criminal Investigation

The Homicide Detail of the San Francisco Police Department was notified of the Officer Involved Shooting and a criminal investigation into the incident was initiated. Homicide Inspectors John Cagney #341, and Carl Bonner #1099, and Sergeant John Burke #2240 responded to the scene, as well as Captain Jason Fox #788.

Inspector Cagney, Inspector Bonner, and Sergeant Burke conducted interviews of the involved members, and witnesses as part of their criminal investigation. The interviews were voluntary and each of the involved members were represented by POA Attorney Harry Stern.

Homicide Interview summaries:

Witnesses:

Civilian Witness [REDACTED] (9-1-1 caller)

[REDACTED] told the investigator [REDACTED] had taken [REDACTED] dogs to Bernal Heights with [REDACTED] friend, [REDACTED]. They parked their vehicle on Bonview St. [the northwest side of the park] and walked around. As they were coming back "down" they walked past Nieto, within 20 feet of him.

As they got approximately 100 feet past Nieto, [REDACTED] informed [REDACTED] that [REDACTED] saw Nieto had a gun on his hip. [REDACTED] explained to [REDACTED] that the gun was holstered on the side of his belt and that he kept touching it in a "weird" way. [REDACTED] said after that, [REDACTED] and [REDACTED] saw to [REDACTED] jogging towards Nieto's direction and warned them to turn around because they believed Nieto had a gun.

█████ said █████ and █████ walked down some steps that led to where their car was parked, and when they went down far enough to remain at eye level with the street yet still able to see Nieto, that was when █████ spoke to 9-1-1 Dispatch.

█████ described where Nieto was standing and explained that Nieto was eating chips and moving in a two or three foot circle, not really looking at anything, and, "just kind of loitering in a weird way." █████ explained that Nieto looked oriented; like he was waiting for something- not going anywhere and not there to watch the sunset.

█████ stated that while █████ was on the phone, Nieto started to walk their way; down the hill towards the gate. █████ said █████ and █████ did not want Nieto to see them so they walked further down the steps and lost sight of Nieto.

Dispatch asked █████ to go back up the steps a little ways to see where Nieto had gone. When █████ went up, █████ heard the gunshots and believed the shots were going right over █████ and █████ heads. They ran down the hill to their car and got behind it. █████ said █████ thought Nieto may have recognized █████ was calling someone on him and was therefore shooting at █████, but could not tell for sure.

█████ said █████ did not see the "shootout." █████ did see an unmarked police car go by them with its red and blue lights on, and did hear sirens. Before the shots were fired, █████ did not hear any yelling or commotion of any type. █████ later explained █████ thought █████ may have been too far away to hear any commands because they were walking down the steps.) █████ went on to explain that there were some shots, then a pause, then more shots, and:

[I]t lasted for maybe 20 seconds, 30 seconds; enough that it felt legitimate that this guy [Nieto] could be looking at me and shooting at me.

█████ said after the shooting stopped, the Dispatcher told them to stay where they were so the police could talk to them. █████ and █████ decided to get in their car and move somewhere else for the police to meet them.

█████ described Nieto has approximately 6'1 to 6'2, weighing approximately 220 to 225 lbs; late 20's to early 30's. █████ said Nieto was wearing a red wind breaker, and black pants, but could not see a shirt. █████ said nothing about Nieto's demeanor stood out except that he was "just standing there looking 'sketchy', waiting in one spot, not with any purpose."

The investigator asked █████ if █████ would have noticed Nieto if █████ had not said anything to █████ █████ said █████ did not take a second look until █████ said something. █████ said another guy had walked near them after █████ pointed out the gun and they asked him if █████ saw what they had seen and █████ said █████ did.

Civilian Witness █████

█████ said █████ was walking █████ dogs in Bernal at approximately 6:30pm. They walked clockwise, up on the west side going northbound when they passed a man [Nieto] who was wearing a bright red jacket, black pants, and had a holster on his right side with a pistol in it. █████ said Nieto kept pulling his jacket up and showing the pistol, then he would put his hand on the pistol.

█████ said █████ waited a bit until they passed Nieto and then █████ told █████ "That man has a gun." █████ affirmed to █████ that █████ should call the police. After they

got approximately 100 to 150 yards past, they saw [REDACTED] but told [REDACTED] around because of the guy with the gun.

[REDACTED] said they started walking back to the car while talking to Dispatch and stepped down the hillside until they were eye level to the street. [REDACTED] said Nieto kept going through a chain link fence, then he would pop back out and shadow box for a bit.

While they were standing down the hillside, they saw another [REDACTED] and [REDACTED] asked [REDACTED] if he saw Nieto and the [REDACTED] confirmed [REDACTED] did and told [REDACTED] it was weird and that [REDACTED] should not have "it" out like that. [REDACTED] said [REDACTED] told this other man that they were talking to 9-1-1.

[REDACTED] said Nieto started walking towards their direction so they started to walk towards their car. As they were walking away, [REDACTED] heard shots fired and saw things "flying around." [REDACTED] said [REDACTED] believed Nieto was firing at them or that someone was firing at Nieto. [REDACTED] explained that [REDACTED]

[REDACTED] [Believed [REDACTED] [Nieto] was shooting at us because I could hear the bullets hitting around us.

[REDACTED] said [REDACTED] got the sense that Nieto was coming after them down the hill because their heads were poking up the hill and they were on the phone.

[REDACTED] did not hear any screaming or hollering, but [REDACTED] started yelling at [REDACTED] to get down.

█████ said they stayed on the phone with 9-1-1 and once the shooting stopped, the Dispatcher told them that "they got the guy." █████ said █████ got into █████ car and picked up █████ who had walked to Folsom St. to meet with the police.

When asked by the Inspector of Nieto's demeanor, █████ said Nieto was not threatening but rather "in his own world." █████ said Nieto would look down, then look off, then shadow box and that he only looked sort of crazy in that he was shadow boxing. Nieto never said anything to them.

When asked to describe Nieto, █████ said he was not skinny, and only remembers thinking Nieto was Hispanic, middle aged, stocky build, and wearing some sort of hat.

When asked to describe the gun, █████ said it was not "Western looking," but more like a cop's- rectangle handle. █████ said █████ did not remember what color the gun was but said it was not white, silver, or chrome.

█████ said █████ never saw the police arrive but █████ did hear sirens and █████ did see a gray cop car with lights.

Involved Members:

Officer Richard Schiff #1968

Inspector John Cagney and Inspector Carl Bonner conducted the interview with Officer Schiff who was represented by POA Attorney Harry Stern.

In Officer Schiff's voluntary statement he explained he was on a ride-along with his Field Training Sergeant, Sergeant Sawyer during the time of the incident.

They were on Mission St. completing a traffic citation when the call came out of an "A priority 221 call [person with a gun] on Bernal Heights." Further description indicated the subject [Nieto] was on the northern side of the park.

Officer Schiff, who was the driver of the marked patrol vehicle, drove to the area in an attempt to locate Nieto. While en-route, Sergeant Sawyer was going over tactics with him regarding what to look for once on scene. Officer Schiff said he drove to the southern side of the park thinking he could gain access but the road was blocked. Officer Schiff said he continued eastbound on the south side of the park until he got to a north access road that had a gate.

Officer Schiff, unsure of Nieto's exact location, drove around the gate and onto the ascending north access road. He said as he was driving up, he was looking for a Latin male adult wearing a red jacket. He observed a [REDACTED] on the right side of their vehicle as they were going up the hill who passed them but [REDACTED] did not match the description given. Officer Schiff said as they started to come around a curve, he saw a "flash" of something red and then saw Nieto emerge from around the corner. Nieto was walking towards them and Officer Schiff got to a point where he stopped the vehicle, however Sergeant Sawyer advised him to pull up a little closer to get a good view of Nieto.

Officer Schiff put the patrol vehicle in park and started to exit the vehicle. As he was doing this, he said he saw Nieto raise his arms slightly and that was when he first saw the black holster on Nieto's right hip. He said, "It looked like a big plastic holster with a 211 weapon, a firearm. Officer Schiff said,

At the point that I saw that, I drew my weapon obviously in fear that he had a weapon. I pointed it at him. I told him to show us your hands as well as I heard my Sergeant yelling to him to show us your

hands. At which point he looked directly at us, made eye contact with me, and then said- and this is about from 25 to 30 yards- he said, 'Show me your hands.'

Then he made a motion down, turned, drew the weapon and at that point I began firing. Sergeant Sawyer also was firing, I know that for sure.

Officer Schiff continued to describe the encounter and said that his weapon ran out of bullets so he made a magazine change. He then reengaged Nieto who was standing most of the time. Officer Schiff said:

At one point though he- I wasn't sure if he fell or not, but he went down and laid flat on the ground in what would look like a tactical position.

I could see a red light coming from whatever the firearm was that he had pointing straight at us which to me meant he may have had a laser on that. I continued to fire back until I heard my Sergeant say all right, cease fire, cease fire.

Officer Schiff said after they stopped firing, he saw two officers come up. Sergeant Sawyer then gave the command for all of them to advance on Nieto. Officer Schiff conducted a tactical reload in which he dropped the magazine from his weapon and inserted a fresh, full one. As they got close, Officer Schiff said he saw Officer Morse kick the firearm out of Nieto's hands. Officer Schiff said as they got closer, the weapon looked like it could have been a Taser that Nieto had pulled on them.

Officer Schiff was not sure who handcuffed and searched Nieto, but he did see what looked like a mace can laying on the ground. He said he rolled Nieto over to make sure he did not have any additional weapons, and then checked for a pulse. He said he did not feel a pulse.

Officer Schiff explained that other officers had come to secure the area by then and he and the other involved officers were immediately removed from the scene.

Upon answering follow-up questions by the Inspector, Officer Schiff gave a few more details and clarifications regarding the incident. Per Officer Schiff:

- Nieto never said anything outside of the initial, "Show me your hands."
- The lighting was very good; the sun was still up and it was behind Nieto, so it was illuminating the officers who were in their Class B's, and their marked Police vehicles.
- Nieto's movements with the weapon caused Officer Schiff to believe Nieto possibly had prior military experience or some background with firearms.
- Officer Schiff explained what he meant by Nieto "taking a tactical position" as trying to lower himself to the ground to make himself less of a target.
- Officer Schiff only stopped firing due to Sergeant Sawyer's command to cease fire. Officer Schiff still believed Nieto was a threat due to the position he was laying in.
- Nieto's red jacket and proximity to the Mission District caused Officer Schiff concern that Nieto may be in a street gang.

Sergeant Jason Sawyer #1127

Inspector John Cagney and Sergeant John Burke conducted the interview with Sergeant Sawyer who was represented by POA Attorney Harry Stern.

In his voluntary statement Sergeant Sawyer explained that he was working as the 3H104 that evening, conducting a ride-along with Officer Schiff. He was wearing his Class B uniform and was the passenger in their patrol vehicle.

After just completing a traffic citation, he heard Dispatch broadcast the call of a man with a gun and a distinct description was given; Hispanic male, six-feet tall, 220 lbs, wearing a red sweatshirt, black pants, with a gun on his waist. They were in the area and began a response.

While en-route, Sergeant Sawyer went over some "table-top" exercises with Officer Schiff about what to expect and what to look for once they got on scene. Sergeant Sawyer advised Officer Schiff to start looking immediately at the suspect for weapons, and to think about where to take cover if necessary.

When they first got to the park, they did not see anyone. Once they got further direction, Officer Schiff drove into the park from an access road. It was on this access road that they encountered Nieto. Sergeant Sawyer said he told Officer Schiff to stop the vehicle at a distance he felt was appropriate to remain safe, yet still have a clear view of Nieto. Once Officer Schiff stopped the patrol vehicle, Sergeant Sawyer opened his door and took cover behind the passenger side door pillar. He observed Officer Schiff take cover behind the driver side pillar.

While they were in this position, Nieto advanced towards them. He matched the description he heard over the radio and appeared to be holding a bag of chips.

Sergeant Sawyer said he yelled at Nieto to let him see his hands several times. Nieto threw the bag of chips to the ground, lifted up the right side of his sweatshirt, exposing the holster of the weapon, then said to the officers, "Let me see your hands." Nieto continued to advance on them as he did this, and pulled out the gun from the holster on his right side. Sergeant Sawyer said as Nieto began to raise the gun, he could see a red laser sight emanating from the gun as he pointed it directly at him and Officer Schiff.

Sergeant Sawyer said he fired his weapon at Nieto in the midst of yelling at Nieto, "Police!" and "Drop the weapon!" Shortly after Sergeant Sawyer began firing at Nieto, Nieto fell to his knees and appeared to prone himself out onto the ground. Nieto's weapon was still pointed at him and Officer Schiff, and his head was still up. Sergeant Sawyer continued to fire at Nieto until the point when Nieto appeared to "go limp." Nieto's head went down and the gun went down.

Sergeant Sawyer said he yelled for a cease fire then coordinated a plan to approach Nieto to check on his condition. By this time, Sergeant Sawyer knew that Officer Morse and Officer Chew had come on scene, and the four of them made an approach.

Sergeant Sawyer and the three other officers approached Nieto, while still giving Nieto commands to keep his hands where they could see them. One of the officers kicked the gun out of Nieto's hands. Sergeant Sawyer broadcasted over the air that there had been an Officer Involved Shooting and that they needed an ambulance. He said they turned Nieto over and it appeared he was still breathing. They started to render aid and Nieto appeared to go out of consciousness.

Other units arrived on scene and took over. Sergeant Sawyer said he determined who fired their weapons, and gave a Public Safety Statement to Sergeant Riskin. Sergeant Sawyer said he and the other officers were separated, taken back to the station and monitored.

Later in his interview, Sergeant Sawyer explained that he had been in many critical incidents involving armed suspects but what stood out the most to him in this incident was that the suspect was described as having the gun holstered on his hip. He explained that in most cases, the suspect is described as either having the gun in his hand, waving it around, or in his waistband, and either there is merit or not. But in this case, hearing the detail of the holster was a rarity and was what caused him to discuss tactics with Officer Schiff. Sergeant Sawyer said as soon as Nieto came into his view, he could see a very clear bulge on his right hip, under his sweatshirt.

Sergeant Sawyer said they did not utilize their lights and siren while en route as it did not necessarily call for a "Code-3" response. He also said that the time of day was such that they did not need to utilize their headlights or spotlights to see Nieto. The sun was still pretty high in the sky, and it was behind Nieto, illuminating them and their marked police vehicle. They stopped approximately 25 to 30 yards away from Nieto.

Sergeant Sawyer explained that when he exited his vehicle to take cover and give Nieto commands, Nieto did not stop walking towards them or even seem to "reflect on" those commands.

Nieto's movements were very fluid as he drew the weapon from its holster and pointed it at him and Officer Schiff. Nieto got into a "Weaver stance"- his two

feet and shoulders were squared towards them with the gun in both hands and pointed at them.

When asked by Inspector Cagney what his state of mind was when he saw Nieto make this movement and statement, Sergeant Sawyer said,

We're in full uniform, it's easy to identify us, marked police vehicle right with us. It's completely obvious who we are. At that point because he had spoke English to us I know it wasn't a language barrier, it did not seem that he had some type of hearing issue, any type of mental illness that would cause me to think it was anything other than a man coming at us with a gun, with a gun pointed- it was not in a low ready position, it wasn't pointed at the sky. It was pointed directly at us. I thought he was going to shoot, fire and shoot me or shoot my partner. There was no question in my mind that this guy had bad intentions and I fired to protect myself and to protect my partner.

Officer Roger Morse #1923

Inspector Carl Bonner and Inspector Cagney conducted the interview with Officer Morse who was represented by POA Attorney Harry Stern.

In Officer Morse's voluntary statement he said on the day of this incident he was working as the 3H15D along with a partner, Officer Chew. He was wearing his Class B uniform and was the driver of their marked patrol vehicle.

The call came out regarding a man with a gun on his hip, and wearing red, in Bernal Heights. He drove to the area but not in a "Code-3" manner. While en-route, dispatch gave updates on the suspect's location and what he was doing.

Officer Morse explained that he was familiar with Bernal Heights Park and knew that he could gain access into the park via a north access road. Before getting through the gate, he heard Sergeant Sawyer come over the radio and state that they could see the suspect. Once Officer Morse got through the gate to the access road, he heard shots fired. He drove up the road passed several officers who were walking up on foot.

Officer Morse could see Officer Schiff's vehicle and he pulled in behind, and to the right of it. He said he could see both the passenger and driver of the vehicle ducked behind the frames of their doors but could not tell who was who. In front of Officer Schiff's vehicle was the subject who matched the description given by dispatch, and he was prone out on the ground with his arms in front of him, holding what Officer Morse believed was a gun. Officer Morse said he heard popping sounds and saw flashes coming from Nieto's hands which appeared to be recoiling as if he was firing a gun.

Officer Morse got out of his vehicle and ran around to the driver's side of the other patrol vehicle. He could see Nieto who still appeared to be engaged in a gun fight with the officers on scene. Officer Morse said he did not recall when he drew his own weapon, but he began to fire at Nieto once he got to the driver side of the other patrol vehicle to protect himself and the other officers.

Officer Morse said he could not hear any commands being given aside from hearing Sergeant Sawyer, at some point, tell everyone to stop firing. Officer Morse said that the only reason he stopped firing was because of Sergeant Sawyer's command. Officer Morse said he did not feel the threat was over as Nieto still had the weapon in his hands and it appeared to still be pointed at

them. Due to the fact that he trusted and respected Sergeant Sawyer, he stopped firing when he was told to.

Officer Morse said when they made their approach to Nieto, he could see Nieto was moving in a sort of rocking motion and could hear gurgling sounds coming from Nieto. Nieto still had the weapon in his hands until Officer Morse kicked it away to render the scene safe, and then Officer Chew handcuffed Nieto. It was not until this point that Officer Morse realized the weapon was a Taser instead of a firearm.

Officer Morse described the weapon as looking like a black semi-automatic [firearm]. Once he got close, he could see the small yellow lines across the sides of it. Officer Morse said he could not tell if the Taser had been deployed.

Per Officer Morse, the sun was still out during the incident and he could see clearly. He said that Nieto did not look familiar to him, that he only remembered Nieto was wearing a red jacket, and seemed to be heavysset. When Officer Morse heard about the red jacket, he immediately thought they would be dealing with a Norteno gang member.

Officer Morse said he walked away after seeing Officer Chew handcuff Nieto and did not see who rendered aid.

Officer Nathan Chew #2088

Sergeant John Burke and Inspector Carl Bonner conducted the interview with Officer Chew who was represented by POA Attorney Harry Stern.

In Officer Chew's voluntary statement he explained that on the day of the incident he was wearing his Class B uniform and assigned as the 3H15D along with a partner, Officer Roger Morse. They were patrolling in a marked SFPD vehicle and he was the passenger while Officer Morse was the driver.

Officer Chew said he heard the call of a Hispanic male subject, in the area of Bernal Heights Park, who was wearing a red jacket, black pants, and had a gun on his waist. They responded to the area.

As they were approaching the access road into the park, he saw another patrol vehicle up the road and saw a male subject wearing a red jacket standing in the middle of the road in front of that patrol vehicle. Once Officer Morse got onto the access road, he saw several officers on foot running up the hill towards the other patrol vehicle.

After Officer Morse drove passed these officers, he heard approximately five or six gunshots. Officer Chew said he did not know if it was the suspect [Nieto] or the officers shooting. Shortly after hearing the shots fired, he heard over the radio that there was an officer involved shooting.

Once they got up to the first patrol vehicle, Officer Chew said he saw Sergeant Sawyer on the passenger side, gun drawn, and pointed at Nieto. Nieto was in the prone position, pointing what looked like a dark firearm with a laser pointer on it. Officer Chew said he was not sure who, either Sergeant Sawyer or Officer Schiff was firing their weapon although he did hear one of them yell out, [REDACTED] indicating their magazine was empty or they were reloading.

Officer Chew said when he exited his vehicle, Nieto had his head up as if to be looking at them, and his arms were extended out, seemingly aiming the weapon at them. Officer Chew said he could still hear shots being fired and he saw a red laser "glint" across his eyes. Believing Nieto was trying to fire at him, Officer Chew moved to his right then fired his Department-issued firearm back at Nieto to stop the threat. Officer Chew stated:

I'm thinking if he's aiming a gun with a laser pointer at four uniformed officers and two marked patrol cars, he's going to fire it at us.

Officer Chew said he felt afraid and fired approximately four or five times at Nieto and then saw his head drop as the weapon pulled in towards his body. He stopped firing at this point and it was right around this time he heard Sergeant Sawyer yell out to stop firing. Officer Chew said he believed he also heard Officer Morse yell out something to the effect of, "Let go of the weapon," or "Don't move!"

After they stopped firing, Officer Chew said the four of them, Sergeant Sawyer, Officer Morse, and Officer Schiff, approached Nieto with their guns still drawn. When they got close enough, Officer Chew saw Officer Morse kick the weapon out of Nieto's hands. It was at that moment that Officer Chew could see the weapon looked like a Taser. Officer Chew described it as being black and having a "boxy" look to it with a short handle. It was in the shape of a semi-automatic handgun. Once the weapon was out of Nieto's hands, Officer Chew handcuffed him.

Officer Chew said after he handcuffed Nieto, he was told to move back so that gloved officers could render aid to Nieto who was bleeding. Officer Chew said he heard Sergeant Sawyer request an ambulance.

Medical Examiner Investigation:

Chief Medical Examiner, Amy P. Hart, M.D., Assistant Medical Examiner, Greg B. Pizarro, M.D., and Forensic Autopsy Technician, Jerry Wedrychowski, all members of the San Francisco Medical Examiner's Office, conducted a necropsy of Alejandro Nieto on March 22, 2014 (case number 2014-0292).

Per the Medical Examiner,

The total number of gunshot wounds to the decedent's body may be as few as fourteen (14) or as many as fifteen (15). The gunshot wounds described may have been created by as few as ten (10) bullets due to the ability to align the injuries in the upper extremities with injuries of the head, torso, lower extremities, or with each other.

The Medical Examiner's Office determined the cause of death to be "Multiple gunshot wounds." Other conditions listed: "[REDACTED]"

Findings of the District Attorney:

The San Francisco District Attorney's office responded to the scene of this officer-involved shooting and participated in witness/officer interviews. They completed their own investigation and review. On February 12, 2015 the District Attorney's Office concluded that,

The officers were acting lawfully in self-defense and in defense of others when they discharged their weapons at Mr. Nieto after he drew and pointed a weapon which the officers reasonably believed to be a firearm.”

In their “Analysis and Conclusion” the District Attorney’s Office stated,

In this case, Sergeant Sawyer, Officer Schiff, Officer Morse and Officer Chew all clearly believed their lives, and the lives of the other officers, were in imminent danger at the time they discharged their firearms. Sergeant Sawyer and Officer Schiff both believed Mr. Nieto had a firearm. Believing that Mr. Nieto was about to shoot them, and in fear for their lives, both officer discharged their weapons at him. Once Officer Morse and Officer Chew arrived at the scene they heard gunshots and saw Mr. Nieto in a prone position with his arms outstretched in front of him holding what they each believed to be a semi-automatic firearm. Both officers began firing at Mr. Nieto to protect themselves and the other officers. All four officers continued to believe their lives were in danger and continued to fire until Mr. Nieto’s head and weapon went down and Sergeant Sawyer ordered the officers to cease fire.

The belief of each officer that Mr. Nieto’s weapon was a firearm was clearly reasonable. The Taser recovered from Mr. Nieto was black in color, shaped like a large frame pistol, and equipped with a red laser. At the time of the incident the Taser was armed, its red laser was activated, and the laser was focused in the direction of the officers. Although the Taser had several yellow striped along the sides of the left and right frame sections, they would not have been visible to the

officers when the Taser was in its holster or when the Taser was pointed directly at them from a distance of 25 to 30 yards away. The officer were responding to a call of a man in the park reported to have a gun and saw what appeared to be a gun as soon as they encountered him on the hill. Mr. Nieto refused to obey orders to show his hands and, instead, immediately drew his and pointed his weapon at the officers. Mr. Nieto's actions gave the officers no opportunity to discover that his weapon was not a firearm before having to act to protect themselves and their fellow officers from the threat of death or great bodily harm.

Under these facts, the use of deadly force was justified. It is, therefore, our conclusion that Sergeant Sawyer, Officer Schiff, Officer Morse and Officer Chew acted lawfully.

Administrative Investigation

The Internal Affairs Division was notified of the Officer Involved Shooting and an administrative investigation was initiated. The investigation was led by me, Sergeant Jayme Campbell #759, and I was assisted by Sergeant John Crudo.

The Homicide interviews, Administrative interviews, Incident Report, CAD, Crime Scene Report, Criminalist Report, District Attorney's Report, Medical Examiner's Report, Homicide Report, and applicable Department General Orders were reviewed in preparation of this Summary Report.

Internal Affairs Division Interviews:

Sergeant Sawyer

Sergeant Sawyer and his POA Attorney Harry Stern responded to the Internal Affairs Office on May 16, 2014 and provided me with a compelled statement. I

was assisted by Sergeant John Crudo #1694. Sergeant Sawyer was advised of his Police Officer Bill of Rights and was provided a Lybarger Admonition.

Sergeant Sawyer's statement was consistent with the interview he provided to the Homicide investigators. His account of the details leading up the shooting did not vary. The main questions I asked Sergeant Sawyer were in relation to policy and procedure. Other questions I asked were to gain more specific information in addition to the information obtained from the Homicide interview.

Sergeant Sawyer was working as the 3H104, patrol Sergeant on the evening of this incident. He was utilizing a marked patrol vehicle for this assignment and was wearing his Class B uniform, with his Department star on his outermost garment. He was equipped with his mandated Department-issued equipment, namely his fully loaded firearm, two extra magazines, O.C. spray, baton, handcuffs, and radio.

After Sergeant Sawyer gave me a narrative of what happened that evening, I asked him specific questions about certain details. One of the details that I gained from this Internal Affairs interview was when Sergeant Sawyer learned Nieto's weapon was a Taser. Sergeant Sawyer said he realized the weapon was a Taser upon their approach to assess Nieto's condition. He indicated that he could see the Taser had been "activated" because he could see the prongs attached to the leads that had been deployed from the weapon. Sergeant Sawyer said he had no experience with Tasers and had no idea, prior to this incident, that they were equipped with red laser sights. Due to his training and experience with firearms, Sergeant Sawyer knew that lasers are primarily an "after-market" accessory typically affixed to firearms to allow for more accurate shooting. Sergeant

Sawyer stated that Nieto was very fluid with his manipulation of the weapon and his movements were that of someone firing a gun.

I asked Sergeant Sawyer if he ever received, either before or during his encounter with Nieto, any information regarding his mental status. Sergeant Sawyer said he did not receive any information of the sort, and there was nothing specific that allowed him to ascertain Nieto's mental health status. Sergeant Sawyer went on to explain,

He [Nieto] did not suddenly stop to have like a stand-off and not obey our commands while he's waiting for us and hesitate. He was marching at us at a steady pace, I didn't even know if he was going to stop, and upon hearing our commands, immediately issued or told us to 'show me your hands' and then as fast as someone can, he pulled the gun out right away and pointed it right at us.

Sergeant Sawyer said Nieto never gave them a chance to pause or try to negotiate anything. Nieto never gave them a chance to have a dialogue before he pulled the weapon from his waistband, pointed it at them, and activated the red laser sight. As soon as Sergeant Sawyer saw the red light, he fired his weapon at Nieto because he thought he or Officer Schiff was about to be shot.

I asked Sergeant Sawyer if, aside from all the officers wearing their Class B uniforms and being in marked patrol vehicle, he had a chance to verbally identify himself to Nieto as a Police Officer. Sergeant Sawyer said he recalled yelling out something to the effect of, "Police! Stop! Show me your hands!" Sergeant Sawyer said he did not believe there was any way a reasonable person would not recognize them as Police Officers.

When I asked Sergeant Sawyer if any other force options were reasonable in this incident, namely the Extended Range Impact Weapon (ERIW- Less lethal), he explained that there were no other reasonable options other than lethal when the call is of a person with a gun.

When the situation was safe to do so, Sergeant Sawyer notified Dispatch that there had been an Officer Involved Shooting and that he needed an ambulance. He also provided a Public Safety Statement to Sergeant Riskin prior to being transported from the scene.

I asked Sergeant Sawyer what his intent was in responding to the call and he said that his intent was for a "peaceful resolution." In cases where the person actually has a gun, Sergeant Sawyer said, there are numerous options for that person to end the situation peacefully and that, as a Police Officer, he gives the person every opportunity for that, however, this was not the case. Sergeant Sawyer felt that he had to protect himself.

Officer Schiff

Officer Schiff and his POA Attorney Harry Stern responded to the Internal Affairs Office on May 16, 2014 and provided me with a compelled statement. I was assisted by Sergeant John Crudo #1694. Officer Schiff was advised of his Police Officer Bill of Rights and was provided a Lybarger Admonition.

Officer Schiff's narrative of events in this Administrative interview was consistent with the interview he provided to the Homicide investigators. The main questions I asked Officer Schiff were in relation to policy and procedure. Other questions I asked were intended to gain specific details of the information obtained from the Homicide interview.

Officer Schiff confirmed he was on a ride-along with Sergeant Sawyer. He had switched patrol vehicles from the one he started the evening in to Sergeant Sawyer's vehicle for his ride-along. Officer Schiff said he was the driver that day, and that he would generally set up his vehicle with an Extended Range Impact Weapon (ERIW) however, he could not recall if, on this night, he switched the ERIW into Sergeant Sawyer's vehicle. He said he was wearing his Class B uniform with his Department-issued star exposed on his outermost garment. His duty-belt was equipped with the Department mandated equipment, namely, his fully loaded Department-issued firearm, two extra magazines, O.C. spray, baton, handcuffs, and radio.

On the day of the incident, he had just completed a traffic citation when the call of a person with a gun came out. Officer Schiff said he came up for the run and recalls that the description was of a male wearing a red sweatshirt, with a plastic holster on his right hip, with a gun inside it, and that he was sitting on a bench eating chips. Officer Schiff said he did not respond in a "Code-3" manner; he did not activate the lights and sirens, but immediately headed to the area to search for the subject.

Officer Schiff explained that as he got into the park, via the north access gate, he drove around a curve in the road and that was when he saw Nieto, described as dispatch stated, walking at a fast pace, directly towards their vehicle. Nieto was "walking with a purpose." Because of the time of day and the lighting, there was no need for headlights or spotlights. Everything was easy to see, including that they were in a marked Police Vehicle.

Officer Schiff said he slowed his vehicle down when they were about fifty yards away from Nieto. Sergeant Sawyer told him to pull up a little closer until they got to about twenty-five to thirty yards away from him.

Officer Schiff said as soon as he stopped the car, he drew his weapon and attempted to take cover in the driver side doorjamb. He drew and pointed his firearm at Nieto, due to the nature of the call, and gave Nieto orders to show his hands. Nieto walked a little closer towards them, stopped, and yelled, "Show me your hands!" Nieto then drew his weapon from the holster with his right hand, and pointed it at them. Officer Schiff believed he and Sergeant Sawyer were about to be shot. Officer Schiff fired his weapon at Nieto in his own, and Sergeant Sawyer's, defense. Officer Schiff said he saw a red laser light emitting from Nieto's weapon as soon as it was pointed at him. He described the weapon saying it "looked like to be a large-caliber black handgun."

While Officer Schiff was firing from his Department-issued firearm, he ran out of ammunition forcing him to make a magazine change. Officer Schiff said Nieto continued to stand with his arms outstretched with the weapon still pointed at them. Officer Schiff believed Nieto had continued to fire at him and therefore continued to fire at Nieto. Nieto went down to the ground, onto his stomach as if to get into a tactical, prone position, with his arms and weapon still outstretched in front of him and pointed at Officer Schiff and Sergeant Sawyer with the laser sight still emitting from it. Officer Schiff said he believed Nieto did this to make himself a smaller target, and that Nieto's movement into this position made Officer Schiff think that he may have had some military training.

Officer Schiff said he continued to fire until he heard Sergeant Sawyer yell out "Cease fire!" Once he stopped firing, he realized other officers (Morse and Chew)

had come up behind them. The four of them tactically approached Nieto. Officer Schiff had done a tactical reload prior to making this approach to ensure he had a full magazine in the event Nieto came up firing again.

Once they approached Nieto, Officer Schiff said he saw Officer Morse kick the weapon out of Nieto's hand. Officer Chew and another officer began cuffing Nieto. Officer Schiff saw that Officer Chew was getting blood on his bare hands so he told him to step back. Officer Schiff put on rubber gloves and took over for Officer Chew. Officer Schiff said he found a "couple cans of mace" and some handcuffs on Nieto. Once Officer Schiff felt Nieto was secure, he checked for a pulse and did not feel one.

Officer Schiff said someone asked him if he was involved in the shooting and then told him he had to be separated from the others. He said another officer took over rendering aid to Nieto but he could not remember who, and that he heard someone call for an ambulance over the radio.

Officer Schiff said he did not realize the weapon Nieto was pointing at them was not a gun until Officer Morse kicked it out of Nieto's hands. At that point he then saw two wires coming out of it and then assumed it to be a Taser. Officer Schiff said he did not have experience with Tasers.

I asked Officer Schiff if, from the time the call came out to the time he had observed Nieto, he was given any information regarding Nieto's mental status. Officer Schiff said he had not. When I further asked Officer Schiff if he could ascertain Nieto's mental status once he contacted him, Officer Schiff said,

What I can say is that he clearly understood my command with his response and he clearly recognized that I was a threat

having my weapon out and having my vehicle and being a police officer and being clearly marked. So at that point I could determine that if somebody who was able to, you know, cognitively answer me and respond to my commands and then refuse to do so, at that point, all I could speculate is that he at least knew who we were and he was aware of the decision he was making.

I asked Officer Schiff if Nieto's mental status became a concern for him once he was faced with this situation and he said he was not at that point. He stated that he was concerned with the threat, his safety, and the safety of others. Officer Schiff indicated further that even if he had been given information regarding a mental issue, he would have responded the same way until it was determined whether or not there was a credible threat of a firearm.

Officer Schiff said the incident happened "way too fast," when I asked him if he had a chance to identify himself, verbally as a Police Officer. He explained that being he was in a marked police vehicle, wearing his uniform, and giving his commands, "There's no way he [Nieto] wouldn't have known who or what I was. " and "I believe it would have been impossible for him not to know I was a police officer." Officer Schiff also explained that the only warning he gave was for Nieto to show his hands, and by the time Nieto responded, there was no more time to give any other warning.

Officer Schiff, when explaining why he fired, stated,

I believed he was going to fire on me and I was in fear for my life and the life of my partner and anyone else who was in the area.

When describing his back-drop, Officer Schiff described it as the hillside and the road. He could not see any houses.

Officer Schiff said his intention for responding to the scene was to see whether or not there was merit to a weapon and to try to make the scene safe; to make sure there were no threats and to stop any threats.

Officer Morse

Officer Morse and his POA Attorney Harry Stern responded to the Internal Affairs Office on May 16, 2014 and provided me with a compelled statement. I was assisted by Sergeant John Crudo #1694. Officer Morse was advised of his Police Officer Bill of Rights and was provided a Lybarger Admonition.

Officer Morse's statement was consistent with the interview he provided to the Homicide investigators. The details he provided leading up to the incident did not vary. The main questions I asked Officer Morse were in relation to policy and procedure. Other questions I asked were to gain more specific information in addition to the information obtained from the Homicide interview.

Officer Morse said on this evening, he was working with Officer Chew and he was wearing his Class B uniform with his silver star displayed on his outer most garment. He said he was equipped with the required gear for patrol including: a Department-issued radio, his Department -issued firearm, along with two extra magazines, OC spray, and a baton as additional force options. He was the driver that evening of their marked SFPD vehicle.

I started off by asking Officer Morse what his thoughts were when he first heard the call of a person wearing red and with a gun at Bernal Heights Park. Officer

Morse said when he first heard that, he was thinking there was a Norteno gang member in the park. This made the threat of an armed subject a bit more credible to Officer Morse.

Officer Morse said he did not recall receiving any information on the mental status of the subject prior to contacting him, but that he was CIT trained (Crisis Intervention). He said that the mental status of the subject was not in the forefront of his mind because the call was of a person with a gun and that took precedence over anything else.

When Officer Morse first got to the scene, and drove up the access road, he heard gunshots. He pulled the patrol vehicle up behind the first vehicle on scene and could not tell who the passenger or driver were. He could see Nieto "proned out" with his arms out forward. Officer Morse said Nieto's hands were moving as if they were recoiling from the gun fire. He could see flashes and dust flying, and could see what looked like a black semi-auto[matic] firearm in Nieto's hand. Officer Morse did not immediately draw his weapon but rather checked on the passenger Officer, who appeared to be uninjured, then went around the back of that vehicle to the driver side and saw the driver Officer appeared fine as well.

Officer Morse believed Nieto was firing upon the Officers and began firing his Department-issued firearm at Nieto. When I asked Officer Morse why he fired his weapon he stated,

[T]o stop this guy from shooting at us. Well, you know, Schiff and Sawyer.

I asked Officer Morse if he had any fear that Nieto was going to fire at him as well and he said,

Yeah, I did, for sure. Even when I-right when I exited I said I just knew I said okay I'm probably going to take fire but I wanted to make sure that those guys were okay so.

Officer Morse said that he was firing for the protection of Sawyer, Schiff, himself and his partner. Officer Morse said he was unable to give a warning before firing his weapon. He explained that he was already engaged in a gun fight and if he tried to stand there and give a warning, somebody could get hurt.

I asked Officer Morse what his target was, and what his backdrop was if he knew. He told me that his target was Nieto, who he was able to acquire his sights on. He further stated that his background was slightly uphill and that there were trees. He felt it was, "pretty clear."

When I asked Officer Morse why he stopped firing, he said it was because he heard Sergeant Sawyer yell out to stop firing. He explained that he did not feel the threat was over because they had not gotten the weapon out of Nieto's hand and he did not know if Nieto was still alive or not.

Officer Morse said once they stopped firing, Sergeant Sawyer advised them that they needed to approach. As the four of them approached Nieto, Officer Morse said he was fearful because the weapon was still in Nieto's hands. He recalled saying something to the effect of, "Don't move" to Nieto. He said it looked like Nieto was sort of rolling slightly, and the weapon was still in Nieto's hand. It was not until he was right over Nieto's hands that he noticed the weapon was a Taser. He said even then he was not completely sure it was a Taser because he is not familiar with them. Nieto had a strong grip on the handle in a manner that

someone would be holding a gun, and when Officer Morse attempted to kick the gun away, he had some difficulty.

I then asked Officer Morse if any other force options would have been reasonable in this situation and he said no other options were reasonable, especially because the call was of a person with a gun.

I asked Officer Morse what his intent was in responding to the scene and he said it was to find the subject with the gun and take him into custody. His intent in firing at Nieto was to stop him from harming him and his fellow officers.

Officer Chew

Officer Chew and his POA Attorney Harry Stern responded to the Internal Affairs Office on May 16, 2014 and provided me with a compelled statement. I was assisted by Sergeant John Crudo #1694. Officer Chew was advised of his Police Officer Bill of Rights and was provided a Lybarger Admonition.

Officer Chew's statement was consistent with the interview he provided to the Homicide investigators. As with the previous three officers, the details Officer Chew provided leading up to the incident did not vary. The main questions I asked Officer Chew were in relation to policy and procedure. Other questions I asked were to gain more specific information in addition to the information obtained from the Homicide interview.

Officer Chew explained that on the evening of the incident he was wearing his Class B uniform and he had his silver star pinned to his outermost garment. He was equipped with his radio, his fully-loaded Department-issued firearm, O.C.

spray, handcuffs, belt-keys, and extra magazines. He was the passenger in a marked SFPD vehicle.

On the night of the incident, Officer Chew recalled it was still bright out. There were no street lights and it was a clear day. The call came out of a person with a gun in Bernal Heights Park up on the hill. He recalled dispatch saying that the caller described the subject [Nieto] as acting a little strange or aggressive towards people out there. Nieto was also described as wearing a red jacket.

Officer Chew said when they began their response, they were not going Code-3 (lights and sirens) but they were able to use the freeway and got to the area quickly. His thought process, while en route, was to make sure that the scene was safe.

I asked Officer Chew if there was any description given, however specific, about the mental status of the subject and he said "No." Officer Chew also explained that if he had this kind of information that Nieto had mental health issues, his response or contact once he saw Nieto would not have been different. He said that by the time he saw Nieto, it looked like Nieto was pointing a gun in his direction and the direction of his fellow officers, and whether or not Nieto had a mental condition, he was going to defend himself and his coworkers.

Officer Chew explained that before he got through the gate to the access road, he could see a subject in a red jacket, presumably Nieto, standing in front of a patrol vehicle. Once they got through the gate there was a curve in the road, and his view of Nieto and the patrol vehicle was blocked by a tree. Prior to regaining a visual of them, Officer Chew heard approximately six gunshots. This caused him to believe Nieto was firing at his coworkers or that they had some reason to fire

at Nieto so he drew his weapon just prior to his vehicle coming to a stop. Officer Chew explained what he saw the next time he had a visual of Nieto:

He's [Nieto] in a prone position with both arms pretty much fully extended holding what looked like a gun to me with a laser pointer on it and I could see the laser pointer kind of brighten up so I believe he was kind of scanning in my direction or Officer Morse's direction too.

(Officer Chew described the prone position as "a tactical position to steady your arms a little bit better to get a better aim on your target.")

Officer Chew went on to say,

...first thing I saw was that red laser pointer and I got- I was afraid so I moved to the right, shifted to the right quickly then shifted back to the left just to make sure he wasn't firing in my direction, evading, yeah.

Officer Chew said that what he knew of a red laser was that they were put on firearms and used for aiming purposes.

I asked Officer Chew if he was familiar with Tasers and if he was aware that Tasers also have red lasers. He said he was not familiar with Tasers but was aware that they have red lasers as well. I asked him what he saw in Nieto's hand and he said, "The shape of a handgun." I asked Officer Chew if there was any reason for him to believe that the object in Nieto's hand was anything but a gun and he replied,

No, just the moment is so quick that I'm just going to automatically believe it's a gun due to the nature of the call at the same time.

I asked Officer Chew if he was able to identify himself as a Police Officer to Nieto, aside from wearing a Police uniform. Officer Chew said he was not able to because after seeing the laser pointed at him, he felt like he did not have time. Officer Chew did not believe there was any reason Nieto would not know he was a Police Officer and explained that he was in his full Police uniform, in a marked patrol vehicle with lights on the top, and Sergeant Sawyer was in his full uniform with his marked vehicle as well.

I asked Officer Chew if it was feasible for him to give Nieto a warning before he fired his weapon at him and he said that it was not because he did not feel like he had time.

When asked what his intent was in firing his weapon, Officer Chew said it was to protect himself, his coworkers, and citizens in the area. He believed Nieto was dangerous. He said he stopped firing when he noticed Nieto's head drop to the ground and either one or both of his arms pulled in towards his body. At this point, the tip of what he thought was a gun, was no longer pointed in their direction. Officer Chew recalled hearing Sergeant Sawyer call out a cease fire, but by then he saw Nieto's head go down and he was not going to fire again.

Officer Chew described when he first realized the weapon in Nieto's hand was a Taser. He said it was not until after they approached Nieto; when Officer Morse had kicked it out of Nieto's hands. Officer Chew said he could see that parts of it were black and that it looked like the prongs had been ejected already. He said he believed the red laser was still emitting from it. He described the shape as that of a firearm.

I asked Officer Chew if he felt any other force options were reasonable in this situation, namely the Extended Range Impact Weapon (ERIW). Officer Chew said the initial call was of someone with a gun and the ERIW is not something he would use against someone with a gun.

I asked Officer Chew if he had any intrusive thoughts about his life or family while he was in this perceived gun battle with Nieto. He said that initially when they got to the scene and stepped out of his vehicle, he could not see the other Officer with Sergeant Sawyer. He said he thought the Officer had been shot and that was why Sergeant Sawyer was engaging Nieto as well. Officer Chew said he was afraid for the other Officer and also afraid for himself and Officer Morse.

Officer Chew said after they ceased fire then made their approach to assess Nieto and render the scene safe, he began to handcuff Nieto, and while doing so heard Sergeant Sawyer call for an ambulance. He said he did not know who initially rendered aid to Nieto because he did not have gloves on and was pulled away from Nieto so other Officers could take over.

Officers' Training and Experience:

Sergeant Sawyer entered the San Francisco Police Department on [REDACTED]. He completed the Basic Academy training on [REDACTED]. Sergeant Sawyer has extensive training in Law Enforcement tactics and was in compliance with his Bi-annual firearms qualification.

Officer Schiff entered the San Francisco Police Department on [REDACTED] and completed the Basic Academy training on [REDACTED]. He was in compliance with his Bi-annual firearms qualification.

Officer Morse entered the San Francisco Police Academy on [REDACTED] and completed the Basic Academy training on [REDACTED]. He completed the forty hour Police Crisis Intervention II course in October of 2012. Officer Morse was in compliance with his Bi-annual firearms qualification.

Officer Chew entered the San Francisco Police Department on [REDACTED] and completed the Basic Academy training on [REDACTED]. He was in compliance with his B-annual firearms qualification.

Post Discharge Actions:

As required by Department General Order 8.11, Sergeant Sawyer, Officer Schiff, Officer Morse, and Officer Chew were placed on administrative assignment. The General Order states:

Officers who discharge a firearm in an officer-involved shooting will be reassigned to his or her respective Bureau Headquarters. Officers shall not return to regular assignment for a minimum of 10 calendar days. This reassignment is administrative only and in no way shall be considered punitive.

While on administrative assignment, Officer Schiff, Officer Morse, and Officer Chew responded to the Behavioral Sciences Unit for a debriefing on March 25, 2014 and Sergeant Sawyer responded on March 27, 2014. The debriefing was facilitated by Sergeant Stephanie Long #128.

Officers Schiff and Chew responded to the Lake Merced Range on March 25, 2014 and Sergeant Sawyer and Officer Morse responded on March 27, 2014. Officer Nick Shihadeh #1612 facilitated the post-discharge weapon debrief and

reviewed the proper manipulation of their replacement firearms and related Department Policies and Procedures.

Sergeant Sawyer and Officer Morse responded to the San Francisco Police Department's Regional Training Center on March 27, 2014 and Officers Schiff and Chew responded on March 28, 2014 for a post-discharge force options debrief led by Officer Kirk Tomioka. Each of the officers satisfactorily completed three "Use of Force" scenarios.

On March 28, 2014, Deputy Chief David Shinn #1276 (ret.) convened a Return to Duty Panel to consider whether to recommend to Chief Suhr the return of Sergeant Jason Sawyer, Officer Richard Schiff, Officer Roger Morse, and Officer Nathan Chew to their regular assignments. The Homicide Detail provided a summary of the initial findings of the criminal investigation. The panel recommended the return of all four officers to their regular duties and forwarded their recommendations to Chief Suhr.

Chief Suhr concurred with the Return to Duty Panel's recommendation. A letter regarding this decision was sent to the Police Commission's President at the time, Thomas Mazzucco, dated March 28, 2014. The Chief's decision was presented to the Police Commission on April 2, 2014, after which Sergeant Sawyer, Officer Schiff, Officer Morse and Officer Chew were returned to their regular assignments.

CONCLUSION:

The focus of this administrative investigation is whether Sergeant Jason Sawyer #1127, Officer Richard Schiff #1968, Officer Roger Morse #1923, and Officer

Nathan Chew #2088 discharged their Department-issued firearms on March 21, 2014 in accordance with San Francisco Police Department Policy and Procedure. The criminal investigations, conducted by the San Francisco Police Department Homicide Detail and by the Office of the District Attorney of the City and County of San Francisco, concluded that Sergeant Sawyer, Officer Schiff, Officer Morse, and Officer Chew had acted lawfully on March 21, 2014. District Attorney George Gascon specifically noted in the District Attorney's charging decision that, "[T]he officers were acting lawfully in self-defense and in defense of others when they discharged their weapons at Mr. Nieto after he drew and pointed a weapon which the officers reasonably believed to be a firearm."

The administrative investigation considered the criminal investigative findings, statements, and evidence as well as the following applicable statute and Department General Order provisions:

Penal Code Section 835a:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Department General Order 5.01 (Use of Force rev. 10/4/95) states, in part:

D. CATEGORIES OF FORCE TO EMPLOY (IN ASCENDING ORDER OF GRAVITY)

1. When the use of force is necessary and appropriate, officers shall, to the extent possible, utilize an escalating scale of options and not employ more forceful measures unless it is determined that a lower level of force would not be adequate, or such a level of force is attempted and actually found to be inadequate. The scale of options, in order of increasing severity, is set forth below:
 - a. Verbal Persuasion
 - b. Physical Control (e.g., passive resister, bent wrist control, excluding the carotid restraint)
 - c. Liquid Chemical Agent (Mace/Oleoresin Capsicum)
 - d. Carotid Restraint
 - e. Department-Issued Baton
 - f. Firearm
2. It is not the intent of the order to require officers to try each of the options before escalating to the next. Clearly, good judgment and the circumstances of each situation will dictate the level at which an officer will start. Officers using any type of force are accountable for its use.

E. REASONABLE FORCE

1. Officers must frequently employ the use of force to effect arrests and ensure the public safety. It is not intended that any suspect should ever be allowed to be the first to exercise force, thus gaining an advantage in a physical confrontation. Nothing in this order should be interpreted to mean that an officer is required to engage in prolonged hand-to-hand combat with all its risks before resorting to the use of force that will

more quickly, humanely and safely bring an arrestee under physical control.

2. Penal Code Section 835 (definition- as indicated above)

F. CIRCUMSTANCES JUSTIFYING THE USE OF FORCE

1. Officers may use force in the performance of their duties in the following circumstances:
 - a. To prevent the commission of a public offense.
 - b. To prevent a person from injuring himself/herself.
 - c. To effect the lawful arrest/detention of persons resisting or attempting to evade that arrest/detention.
 - d. In self-defense or in the defense of another person.
2. Before using force, the officer should consider these questions:
 - a. What actions on the part of the suspect justify the use of force?
 - b. What crime is being or has been committed?
 - c. Does the situation require the immediate use of force?

Department General Order 5.02 (Use of Firearms rev. 3/16/11) states, in part:

I.B. HANDLING AND DRAWING FIREARMS

1. HANDLING FIREARMS. An officer shall handle and manipulate a firearm in accordance with Department-approved firearms training. An officer shall not manually cock the hammer of the Department-issued handgun to defeat the first shot double-action feature.
2. AUTHORIZED CIRCUMSTANCES. An officer may draw or exhibit a

firearm in the line of duty when the officer had reasonable cause to believe it may be necessary for his or her own safety or for the safety of others. When an officer determines that the threat is over, the officer shall holster his or her firearm or hold the shoulder weapon in port arms position pointed or slung in a manner consistent with Department-approved firearms training. If an officer points a firearm at a person and the person is not arrested, and if the circumstances permit, the officer should tell the individual the reason the officer drew the firearm.

3. DRAWING OTHERWISE PROHIBITED. An officer shall not draw a Department-issued firearm except as authorized by this order, for inspection by a superior, maintenance, safekeeping, or Department-approved training.

I.C. DISCHARGE OF FIREARMS

1. PERMISSIBLE CIRCUMSTANCES. Except as limited by Sections C.4 and C.5., an officer may discharge a firearm in any of the following circumstances:
 - a. In self-defense when the officer has reasonable cause to believe that he or she is in imminent danger of death or serious bodily injury.
 - b. In defense of another person when the officer has reasonable cause to believe that the person is in imminent danger of death or serious bodily injury. However, an officer may not discharge a firearm at a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an imminent danger of death or serious bodily injury to the officer or any other person.

- c. To apprehend a person when both of the following circumstances exist:
 - (1) The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND
 - (2) The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed.
- 2. VERBAL WARNING. If feasible, and if doing so would not increase the danger to the officer or others, an officer shall give a verbal warning to submit to the authority of the officer before discharging a firearm.
- 3. REASONABLE CARE. To the extent practical, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of innocent members of the public.
- 4. GENERALLY PROHIBITED CIRCUMSTANCES. As a warning.

Conclusion Summary

After the examination of the totality of this incident, the relevant policies, the investigative conclusions, and other considerations described in this report, it is concluded that based on the preponderance of evidence: Sergeant Jason Sawyer #1127, Officer Richard Schiff #1968, Officer Roger Morse #1923, and Officer Nathan Chew #2088 each fired his weapon on March 21, 2014 within the guidelines set forth in San Francisco Police Department General Orders 5.01 and 5.02.

Prior to their encounter with Nieto, Sergeant Sawyer and Officer Schiff were responding to the dispatched call of a male, wearing a red jacket, with a gun in a holster on his hip in Bernal Heights Park, an area in the Ingleside District not known for violent activity. Due to the nature of the call, several units began a response to investigate and determine if there was merit, including Officer Morse and Officer Chew.

Upon contacting Nieto, Sergeant Sawyer verbally identified himself and Officer Schiff as the Police. Both Officers gave Nieto commands to show them his hands as they pointed their Department-issued firearms at him. The Officers were not only in their uniforms with their stars exhibited on their outermost garment, but they were also in a marked SFPD vehicle equipped with a red and blue light bar across the top.

Instead of complying with the Officers' commands, Nieto yelled at them to show him their hands, drew his weapon from the holster on his hip, and pointed it at the Officers in a threatening manner.

Nieto's actions left Sergeant Sawyer and Officer Schiff no other reasonable option than to defend themselves and each other, from what they reasonably perceived as a deadly threat, and consequently fired upon Nieto.

At approximately the same time, Officer Morse and Officer Chew heard gun fire, and came onto the scene where they reasonably perceived they, as well as the two other officers already on scene, were being fired upon by Nieto. Officer Morse and Officer Chew also discharged their firearms at Nieto in defense of

themselves, each other, and the other Officers, from a reasonably perceived deadly threat.

RECOMMENDATION:

Based on the above findings, it is recommended that Sergeant Jason Sawyer's use of his Department-issued firearm on March 21, 2014 be deemed **In Policy** and **Proper Conduct**.

Based on the above findings, it is recommended that Officer Richard Schiff's use of his Department-issued firearm on March 21, 2014 be deemed **In Policy** and **Proper Conduct**.

Based on the above findings, it is recommended that Officer Roger Morse's use of his Department-issued firearm on March 21, 2014 be deemed **In Policy** and **Proper Conduct**.

Based on the above findings, it is recommended that Officer Nathan Chew's use of his Department-issued firearm on March 21, 2014 be deemed **In Policy** and **Proper Conduct**.

It is further recommended that this case be forwarded to the Firearm Discharge Review Board for review per Department General Order 8.11.

Submitted By:

Jayne Campbell

Sergeant Star 759



Date: June 11, 2015

Approved By:

Robert Yick

Lieutenant Star 1264



Date: June 11, 2015